

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MAURICIO ANTIONIO  
ALVARENGA and GLADYS  
FUENTES,

Petitioners,

v.

EDUARDO AGUIRRE, JR., Director  
United States Citizenship and  
Immigration Service, and  
MICHAEL CHERTOFF, Secretary,  
Department of Homeland Security,

Respondents.

Civil Action No.  
05-11390-JLT

**MEMORANDUM IN RESPONSE TO THE PETITIONERS' REQUEST FOR A  
STAY**

**Introduction**

Respondents submit this memorandum in opposition to the Petitioners' request for an order of this Court staying the removal of Petitioner. As described more fully below, Congress has stripped this Court of jurisdiction to stay the Petitioner's removal.

Petitioner's sole recourse for a stay of removal is to seek an order of the First

Circuit Court of Appeals in conjunction with his appeal of the BIA's decision upholding the order of removal.<sup>1</sup>

### **Facts**<sup>2</sup>

Mauricio Alvarenga ("Alvargenga"), a foreign national of unidentified origin, was convicted of assault and battery by means of a dangerous weapon in the West Roxbury District Court on March 14, 2004. Complaint, p. 2. The police report underlying the offense indicates that Alvarenga assaulted both co-plaintiff, Gloria Furntes ("Fuentes"), and their two year old child. See Conviction and Police Report, attached hereto as Exhibit 2.<sup>3</sup> Alvarenga was sentenced to eleven months imprisonment, six months to be served. Id. Alvarenga was subsequently detained by immigration officials and placed into removal proceedings. Id.

Alvarenga had married, Fuentes, a United States citizen, in August of 2003. Id. On September 24, 2004, Alvarenga sought a continuance of his removal proceedings to seek

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<sup>1</sup> Indeed, Petitioner has appealed his order of removal to the First Circuit and has requested a stay pending disposition of the appeal. See First Circuit Docket # 05-1933, a copy of which is attached as Exhibit 1.

<sup>2</sup> For purposes of the motion, all factual allegations are taken as true.

<sup>3</sup> Undersigned counsel was faxed a copy of these materials on July 7, 2005, at 10:00 a.m. by the Clerk's Office of the West Roxbury District Court. If their authenticity is disputed by Plaintiffs, the Respondents will supplement this filing as time allows.

approval of an I-130 petition<sup>4</sup> filed on his behalf by Fuentes. Id., p. 2-3. The Immigration Judge (“IJ”) allowed a continuance until November 11, 2004. Id., p. 3. Fuentes filed the application on November 8, 2004. Id., p. 3. On November 11, 2004, the Petitioner requested a further continuance of his removal proceedings as the Respondents had not yet acted upon the I-130 Petition. Id., p. 3. The IJ denied a continuance, conducted a hearing, and found Alvarenga removable. Id. p. 3. See also, IJ Decision, attached as Exhibit 3.

Alvarenga appealed to the Board of Immigration Appeals (“BIA”). Id., p. 3. On May 23, 2005, the BIA upheld the order of removal, finding, *inter alia*, that the IJ had not abused his discretion in denying the requested continuance. Id., p. 3-4. See also, BIA Decision, attached as Exhibit 4.

Alvarenga filed an appeal of the BIA’s decision in the First Circuit Court of Appeals on June 21, 2005, and has sought a stay of removal pending disposition of that appeal. See Exhibit 1.

Alvarenga filed the instant mandamus action, on or about June 30, 2005, and requested that this Court also enter a stay of his removal.

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<sup>4</sup> An I-130 is the means by which an individual married to a non-citizen may obtain an “immediate relative visa.” Such a visa is a prerequisite to seeking to adjust one’s

## ARGUMENT

### 1. This Court Lacks Jurisdiction

On May 11, 2005, the President signed into law the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (“RIDA”), which, among other things, amends certain provisions of the Immigration and Nationality Act (“INA”). Significant for purposes of the instant request for a stay of removal, Congress specifically amended the judicial review provisions of the INA to provide that the sole jurisdiction to review the validity and execution of any and all removal orders lies in the United States Circuit Courts of Appeals. Section 106(a)(1)(B) of the RIDA creates a new INA section 242(a)(5), 8 U.S.C. § 1252(a)(5):

(5) EXCLUSIVE MEANS OF REVIEW- Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section *shall be the sole and exclusive means for judicial review of an order of removal* entered or issued under any provision of this Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms ‘judicial review’ and ‘jurisdiction to review’ include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

Id. (emphasis added).

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immigration status based upon marriage. See 8 U.S.C. §1255.

Section 106(a) of the RIDA explicitly and unequivocally eliminates mandamus jurisdiction in the district courts to entertain any challenge to “any action taken” or “proceeding brought” to remove an alien. Specifically, Section 106(a)(2) of the RIDA, amends 8 U.S.C. §1252(9) to provide:

**CONSOLIDATION OF QUESTIONS FOR JUDICIAL REVIEW-**

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Id. Section 106(a)(3) of the RIDA further amends 8 U.S.C. § 1252(g) to provide:

**EXCLUSIVE JURISDICTION.**--Except as provided in this section and *notwithstanding any other provision of law (statutory or nonstatutory) including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title*, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

Id. (amendments italicized).

These amendments became effective on the date of enactment, May 11, 2005. See Section 106(b) of the RIDA. The instant action filed on or about June 30, 2005, is indisputably subject to its provisions.

The sum and substance of these amendments is to make explicit that no court other than the court of appeals has any subject matter jurisdiction respecting “all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien* from the United States,” and respecting “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under th[e] [INA].” See INA sections 242(b)(9) and 242(g), codified at 8 U.S.C. §1252(b)(9) and (g), respectively, as amended by the RIDA.

The instant claim, seeking mandamus and an injunction prohibiting the execution of Alvarenga’s order of removal, is clearly outside this Court’s jurisdiction. Congress specifically and unequivocally eliminated mandamus jurisdiction in this Court to hear any claim “arising from any action taken . . . to remove an alien.” See Section 106(a)(2) of the RIDA, amending 8 U.S.C. §1252(9). Even if this Court were to construe the instant claim as one that did not fall within that provision, Congress has also expressly legislated that this Court lacks jurisdiction to enjoin the execution of an order of removal. See Section 106(a)(3) of the RIDA, amending 8 U.S.C. § 1252(g).

As a consequence, the requested stay must be denied.<sup>5</sup>

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<sup>5</sup> It is worthy of note that Alvarenga is not without a remedy, he can, and has, sought a stay of removal from the First Circuit Court of Appeals.

**Conclusion**

As a consequence of the foregoing, the request for a stay must be denied for lack of subject matter jurisdiction.

Respectfully submitted,  
MICHAEL J. SULLIVAN  
United States Attorney

/s/ Mark J. Grady  
Mark J. Grady, Assistant U.S. Attorney  
United States Attorney's Office  
John Joseph Moakley Courthouse  
One Courthouse Way  
Boston, MA 02210  
(617) 748-3100



## General Docket

### US Court of Appeals for the First Circuit

Court of Appeals Docket #: 05-1933 Filed: 6/21/05  
Nsuit: 0 (Criminal or NOT SET)  
Alvarenga, et al v. Gonzales  
Appeal from: U.S. Immigration & Naturalization Serv.

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Lower court information:

District: 0090-1 : A78-634-062 lead: A78-634-062  
Date Filed: \*\*/\*\*/\*\*  
Date order/judgment: 5/23/05  
Date NOA filed: \*\*/\*\*/\*\*

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Fee status: paid

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Prior cases:

None

Current cases:

None

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Panel Assignment:

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Docket as of June 24, 2005 8:34 pm

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MAURICIO ANTONIO ALVARENGA  
Petitioner

Eduardo Antonio Masferrer  
FTS 617-531-0136  
617-531-0135  
Suite 720  
[NTC ret]  
Masferrer & Hurowitz  
6 Beacon St.  
Boston, MA 02108

v.

ALBERTO GONZALES, Attorney  
General  
Respondent

Michael J. Sullivan  
617-748-3100  
[NTC gvt]  
U.S. Attorney's Office



John Joseph Moakley Courthouse  
1 Courthouse Way  
Boston, MA 02210

Neil Cashman  
FTS 617-565-4921  
617-565-3142  
[NTC gvt]  
Immigration and Naturalization  
Service  
JFK Federal Building  
Government Center  
Room 425  
Boston, MA 02203

Nora Livers, Paralegal  
FTS 202.307.0592  
202.616.9125  
[NTC gvt]  
Office of Immigration  
Litigation  
PO Box 878  
Ben Franklin Station  
Room 7019N  
Washington, DC 20044

Docket as of June 24, 2005 8:34 pm

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MAURICIO ANTONIO ALVARENGA

Petitioner

v.

ALBERTO GONZALES, Attorney General

Respondent

Docket as of June 24, 2005 8:34 pm

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6/21/05 AGENCY CASE docketed. Opening forms sent. Petition for  
Review filed by Petitioner Mauricio Antonio Alvarenga.  
Certificate of service date 6/16/05. Appearance form due  
7/5/05. Certified List Due 8/1/05. [05-1933] (geor)

6/21/05 MOTION For Stay of Removal Pending Resolution of Petition for Review filed by Petitioner Mauricio Antonio Alvarenga. Certificate of service dated 6/16/05. [05-1933] (geor)

6/21/05 MEMORANDUM In Support of Motion For Stay of Removal Pending Resolution of Petition for Review filed by Petitioner Mauricio Antonio Alvarenga. Certificate of service dated 6/16/05. [1006413-1] [05-1933] (geor)

6/21/05 FILING FEE PAID by Petitioner Mauricio Antonio Alvarenga. Receipt No. 013201. Amount: \$250. [05-1933] (geor)

Docket as of June 24, 2005 8:34 pm

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PACER Service Center			
Transaction Receipt			
07/06/2005 16:12:09			
PACER Login:	us8384	Client Code:	
Description:	dkt report	Case Number:	05-1933
Billable Pages:	4	Cost:	0.32

<b>CRIMINAL DOCKET - OFFENSES</b>			DEFENDANT NAME <b>MAURICIO A FUENTES</b>			DOCKET NUMBER <b>0306CR003888</b>		
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COUNT / OFFENSE <b>1 A&amp;B WITH DANGEROUS WEAPON c265 §15A(b)</b>						DISPOSITION DATE AND JUDGE <b>1-9-04 Rufe</b>											
FINE/ASSESSMENT		SURFINE		COSTS		OUI STATE FEE		OUI VICTIMS ASMT		HEAD INJURY FEE		RESTITUTION		V/W ASSESSMENT		OTHER	
														<b>50</b> <input type="checkbox"/> WAIVED			
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)						SENTENCE OR OTHER DISPOSITION <input checked="" type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by: <div style="text-align: right; font-family: cursive; font-size: 1.2em;"> <b>7-8-05</b>  <b>Batteries Prog</b>  <b>Fatherhood Prog</b>  <b>Alude by RD</b> </div>											
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause						FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)						JUDGE		DATE			

COUNT / OFFENSE						DISPOSITION DATE AND JUDGE											
FINE/ASSESSMENT		SURFINE		COSTS		OUI STATE FEE		OUI VICTIMS ASMT		HEAD INJURY FEE		RESTITUTION		V/W ASSESSMENT		OTHER	
														<input type="checkbox"/> WAIVED			
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COUNT / OFFENSE						DISPOSITION DATE AND JUDGE											
FINE/ASSESSMENT		SURFINE		COSTS		OUI STATE FEE		OUI VICTIMS ASMT		HEAD INJURY FEE		RESTITUTION		V/W ASSESSMENT		OTHER	
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CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME MAURICIO A FUENTES	DOCKET NUMBER 0306CR003888
DATE	DOCKET ENTRIES		
2/23/04	Order of custody until 2-26-04. Coffey		
2/23/04	Mitt & NAC issued (5)		
2/26/04	Citty mullen opt		
2/26/04	Mitt issued (5)		
3-15-04	Coffey, J After hearing & stip to some violation found in VOP, G. contd to Hq C for 11 MOS, 6 mos to serve, bal susp to 9/15/05, Sup Prob, obey RO, complete batterers' Prog & Fatherhood Program, 40 DAYS Jail credit		
3/15/04	Mitt issued (5)		
5/14/04	Received by Fax Motion to Revis & Revoke filed by Atty Eduardo Masferrer.		
6/2/04	Motion to Revis & Revoke - Denied J. Coffey Atty Masferrer notified by mail (TS)		
12-3-04	Bail letter sent (C.H.)		
DATE 12-10-04			
\$500 BAIL RECEIVED FROM WEST ROXBURY DISTRICT COURT			
SIGN. Surety CK# 11585			

### APPROVED ABBREVIATIONS

IR = Arraignment PT = Preliminary hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review  
 IP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate  
 TA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing


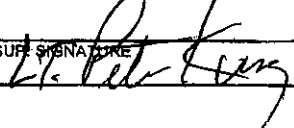
<b>CRIMINAL DOCKET</b>		<b>DOCKET NUMBER</b> <b>0306CR003888</b>	<b>NO. OF COUNTS</b> <b>1</b>	<b>Trial Court of Massachusetts District Court Department</b>			
<b>DEFENDANT NAME AND ADDRESS</b> MAURICIO A FUENTES 116 SPRING ST W ROXBURY, MA 02132  <i>0306R0801</i>		<b>DOB</b> 08/26/1982  <b>DATE COMPLAINT ISSUED</b> 12/22/2003  <b>PRECOMPLAINT ARREST DATE</b> 12/21/2003	<b>GENDER</b> MALE	<b>COURT NAME AND ADDRESS</b> WEST ROXBURY DISTRICT COURT 445 ARBORWAY JAMAICA PLAIN, MA 02130-3688  (617)971-1200  INTERPRETER REQUIRED			
<b>FIRST FIVE OFFENSE COUNTS</b>							
<b>COUNT</b>	<b>CODE</b>	<b>OFFENSE DESCRIPTION</b>		<b>OFFENSE DATE</b>			
1	265/15A/A	A&B WITH DANGEROUS WEAPON c265 §15A(b)		12/21/2003			
<b>DEFENSE ATTORNEY</b> <i>Perry</i>		<b>OFFENSE CITY/TOWN</b> ROSLINDALE		<b>POLICE DEPARTMENT</b> BOSTON P.D. -AREA E-			
<b>DATE &amp; JUDGE</b> <i>Ruf0 12-22-03</i>		<b>DOCKET ENTRY</b> <input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy  <b>Terms of release set:</b> <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail <i>5000</i> <input type="checkbox"/> See Docket for special conditions <input type="checkbox"/> Held (276 §58A) <i>abide by mms R0801</i>  <b>Arraigned and advised:</b> <input checked="" type="checkbox"/> Potential of bail revocation (276 §58) <input checked="" type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10)		<b>DATE &amp; JUDGE</b> <i>Ruf0 12-22-03</i>          <i>1/8/04 Ruf0</i>		<b>FEES IMPOSED</b> Legal Counsel Fee (211D §2A(2)) <i>\$ 150/1015</i> <input type="checkbox"/> WAIVED Legal Counsel Contribution (211D § 2) \$ <input type="checkbox"/> WAIVED Default Warrant Assessment Fee (276 § 30 ¶(2)) \$ <input type="checkbox"/> WAIVED Default Warrant Removal Fee (276 § 30 ¶(1)) \$ <input type="checkbox"/> WAIVED Probation Supervision Fee (276 § 37A) <i>\$ 65/mo</i> <input type="checkbox"/> WAIVED Bail Order Forfeited	
<b>Advised of right to jury trial</b> <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive		<b>Advised of trial rights as pro se (Dist. Ct. Supp.R.4)</b>		<b>Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)</b>			
<b>SCHEDULING HISTORY</b>							
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP		
1	12/22/2003	ARR	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd <i>Matt + NAC issued TS</i>				
2	<i>1-9-04</i>	<i>PTH</i>	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
3	<i>7-8-05</i>	<i>Prob</i>	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
4	<i>2-26-04</i>	<i>Surv</i>	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
5	<i>3-15-04</i>	<i>Surv</i>	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
6	<i>9-15-05</i>	<i>Prob</i>	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
7			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
8			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
9			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
10			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd				
<b>APPROVED ABBREVIATIONS</b> ARR = Arraignment PT = Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PV = probation violation hearing							
<b>A TRUE COPY ATTEST:</b> <i>X</i>		<b>CLERK-MAGISTRATE / ASST CLERK</b>		<b>TOTAL NO. OF PAGES</b>	<b>ON (DATE)</b>		

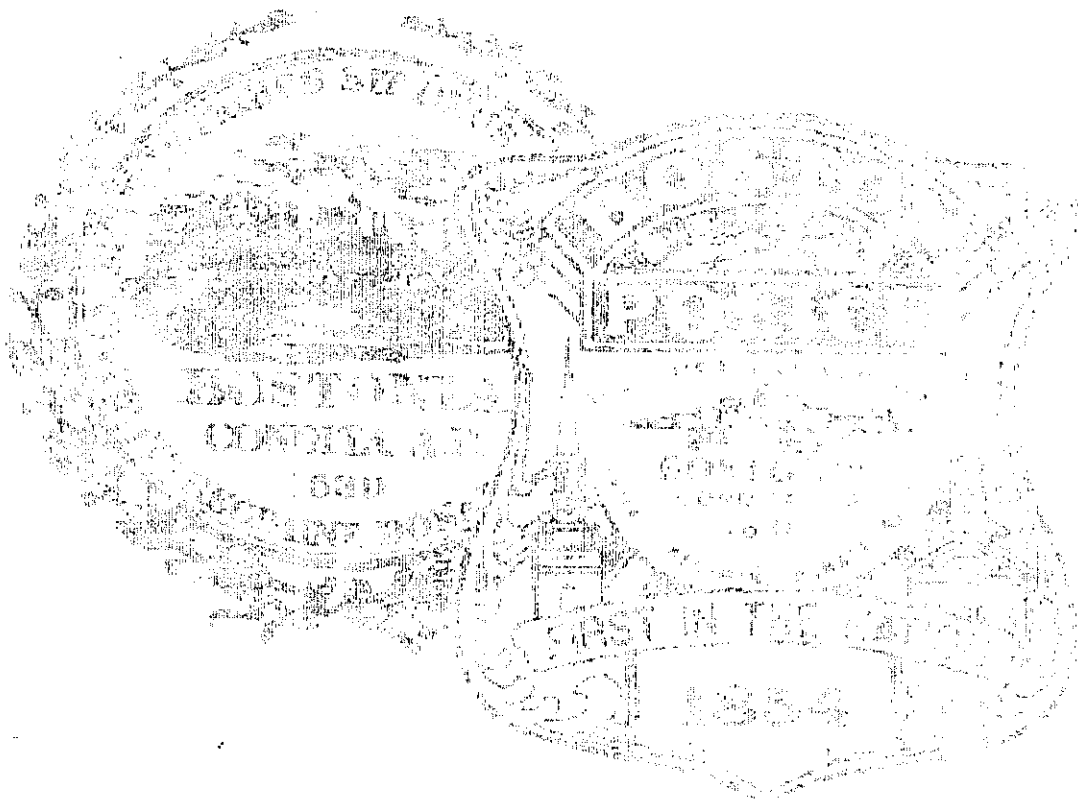
# BOSTON POLICE INCIDENT REPORT

ORIGINAL ☒ SUPPLEMENTARY ☐

KEY SITUATIONS <b>DOMESTIC VIOLENCE</b>				COMPLAINT NO. 00685506		REPORT DIST. E5		CLEARANCE DIST.	
TYPE OF INCIDENT 209A, ABDW				CRIME CODE 0		STATUS		DATE OF OCCUR. A.12/21/03	
LOCATION OF INCIDENT 116 SPRING ST				APT. A9		DISPATCH TIME 12:31 PM		TIME OF OCCUR. A.12:20 PM	
VICTIM-COMP. (LAST, FIRST, MI) FUENTES, ARMANIA				PHONE (617)-327-8850		SEX MALE		RACE WHITE HISPANIC	
ADDRESS 116 SPRING ST, W ROXBURY, MA, 02132-0000				APT. 9A		OCCUPATION		AGE 2	
VICTIM-COMP. (LAST, FIRST, MI) FUENTES, GLADYS				PHONE (617)-327-8850		SEX FEMALE		RACE WHITE HISPANIC	
ADDRESS 116 SPRING ST, W ROXBURY, MA, 02132-0000				APT. 9A		OCCUPATION		AGE 20	
PERSON REPORTING FUENTES, GLADYS				ADDRESS 116 SPRING ST, W ROXBURY, MA, 02132-0000		APT. 9A		PHONE (617)-327-8850	
WAS THERE A WITNESS TO THE CRIME									
PERSON INTERVIEWED		AGE	LOCATION OF INTERVIEW		APT.	HOME ADDRESS		APT.	TELEPHONE
NUMBER OF PERPETRATORS: 1 — CAN SUSPECT BE IDENTIFIED AT THIS TIME									
STATUS ARRESTED		NAME (LAST, FIRST, MI) FUENTES, MAURICIO ANTONIO				S.S. NO. 03184-9284		BOOKING NO. 20030026305	
WARRANT NO.		ADDRESS 116 SPRING ST, WEST ROXBURY, MA, 02141-0000				SEX MALE		RACE WHITE HISPANIC	
						AGE 21		HEIGHT DOB 5-06 8/26/1982	
SPECIAL CHARACTERISTICS (INCLUDING CLOTHING)		WEIGHT 200		BUILD STOCKY		HAIR BLACK		EYES BROWN	
CAN SUSPECT VEHICLE BE DESCRIBED									
STATUS		REG. STATE		REG. NO.		PLATE TYPE		YEAR (EXPI)	
VEHICLE MAKE YEAR		VEHICLE NO.		STYLE		COLOR (TOP-BOTTOM)			
OPERATOR'S NAME		LICENSE NO.		STATE		OPERATOR'S ADDRESS			
OWNERS'S NAME		OWNERS'S ADDRESS							
CAN PROPERTY BE IDENTIFIED									
STATUS		TYPE OF PROPERTY		SERIAL OR IDENT. GUARD NO.		BRAND NAME DESCRIPTION		MODEL	
IS THERE A SIGNIFICANT M.O.									
TYPE OF WEAPON-TOOL CELL PHONE		NEIGHBORHOOD RESIDENCE/HOME		TYPE OF BUILDING RESIDENTIAL APT		PLACE OF ENTRY N/A			
WEATHER CLEAR		LIGHTING NATURAL		TRANSPORTATION OF SUSPECT		VICTIM'S ACTIVITY AT HOME GETTING READY TO GO TO THE MALL			
UNUSUAL ACTIONS AND STATEMENTS OF PERPETRATOR						RELATIONSHIP TO VICTIM FATHER OF CHILD			
IS THERE ANY PHYSICAL EVIDENCE (DESCRIPTION AND DISPOSITION IN NARRATIVE)									
IS THERE ANY OTHER REASON FOR INVESTIGATION (REASON BELOW)									
BLOCK NARRATIVE AND ADDITIONAL INFORMATION									
<p>NO. ABOUT 12:31PM ON 12/21/2003, OFFICERS WOZNAK AND WHITE IN THE E101D, RECEIVED A RADIO CALL FOR DOMESTIC VIOLENCE, LOCATED AT 116 SPRING ST. APT #9A, W ROXBURY. UPON ARRIVAL, OFFICERS SPOKE TO ONE OF THE VICTIMS, GLADYS FUENTES, WHO STATED TO OFFICERS THAT THE SUSPECT, HER HUSBAND, MAURICIO FUENTES, HIT THEIR 2 YEAR OLD CHILD, ARMANIA FUENTES, WITH AN OPEN HAND ON THE CHILD'S LEFT SIDE OF THE FACE WHILE THE CHILD WAS PLAYING. MRS. FUENTES ALSO STATED THAT THE SUSPECT BECAME UPSET WHEN SHE SAID SHE WANTED TO GO TO THE MALL, AT WHICH TIME THE SUSPECT THREW A CELL PHONE AT HER AND STRUCK THE CHILD IN THE FACE WHILE THE CHILD WAS ON HER LAP. OFFICERS NOTICED A SMALL SCRATCH AND SWELLING ON THE BRIDGE OF THE CHILD'S NOSE. MRS. FUENTES ALSO STATED THAT THE SUSPECT THEN THREW THE CELL PHONE A SECOND TIME, THIS TIME STRIKING MRS. FUENTES IN THE RIGHT LEG. EMT'S WERE CALLED TO THE SCENE (AMB# A-5, TYNES/FLANAGAN) TO CHECK ON THE CHILD. THE CHILD REMAINED WITH HIS MOTHER AND FURTHER MEDICAL ATTENTION WAS NOT REQUIRED. THE SUSPECT WAS PLACED UNDER ARREST AND TRANSPORTED TO E-5 FOR BOOKING. THE VICTIM WAS MADE AWARE OF HER 209A RIGHTS AND ADVISED TO SEEK A RESTRAINING ORDER AT W. ROXBURY DISTRICT COURT IF SHE FEELS THE NEED. THE E411D (SULLIVAN), E412D</p>									



(FLAHERTY) AND THE E414D (MCCARTHY) WERE ALSO ON SCENE FOR ASSISTENCE.						
UNIT ASSIGNED E101D	TOUR OF DUTY 2	REPORTING OFFICER'S NAME CRAIG A WOZNAK	REPORTING OFFICER'S SIGNATURE 	REPORTING OFFICER'S ID 86206	PARTNER'S ID 7373	FI NO
DATE OF REPORT 12/21/03	SPECIAL UNITS NOTIFIED(REPORTING)					TELETYPE NO.
TIME COMPLETED 02:39 PM	PATROL SUPERVISOR NAME	PAT. SUP. ID	DUTY SUP. NAME PETER K. KING	DUTY SUP. SIGNATURE 	DUTY SUP. ID 7344	



U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
Boston, Massachusetts

File A 78 634 062

November 10, 2004

In the Matter of

MAURICIO ANTONIO ALVARENGA,	)	
	)	IN REMOVAL PROCEEDINGS
Respondent	)	

CHARGE: Section 237(a)(2)(e)(i) of the Immigration Nationality Act, Domestic Violence Conviction

APPLICATION: Adjustment of Status

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

Eduardo Massford, Esquire

William Richards, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a native citizen of El Salvador. The respondent through counsel admitted allegations for in the Notice to Appear and denied the record of conviction and denied as well removability. The court upon a careful review of the respondents admissions as well as the police report evidence that group Exhibit 3 of the record of proceedings finds by clear and convincing evidence that the government has sustained the charges



SMR

of removeability and the Court finds by clear and convincing unequivocal evidence that the respondent is removable. The respondent wishes to adjust his status, however, he has not received an approved visa of petition at this point so that really appears to be speculative at this point. The respondent does not appear to have any other forms of relief available to him except perhaps voluntary departure. The court notes that given the respondent's criminal record, the court would not be inclined to grant voluntary departure as a matter of discretion.

Accordingly, the court orders the respondents removal to the country of El Salvador.

ORDERED

IT IS HEREBY ORDERED, that the respondent be removed to the country of El Salvador.

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PAUL M. GAGNON  
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before  
PAUL M. GAGNON in the matter of:

MAURICIO ANTONIO ALVARENGA

A 78 634 062

Boston, Massachusetts

was held as herein appears, and that this is the original  
transcript thereof for the file of the Executive Office for  
Immigration Review.

Sharon Ricks  
Sharon R. Ricks (Transcriber)

Deposition Services, Inc.  
6245 Executive Boulevard  
Rockville, Maryland 20852  
(301) 881-3344

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February 11, 2005

U.S. Department of Justice  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A78-634-062 - Boston

Date: MAY 23 2005

In re: ALVARENGA MAURICIO ANTONIO a.k.a. Mauricio Fuentes

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Masferrer, Eduardo, Esquire

ORDER:

PER CURIAM. The respondent has appealed from the Immigration Judge's decision dated November 10, 2004. We agree with the Immigration Judge's determination that the respondent is removable as charged (I.J. at 1-2; Exh. 1). Further, notwithstanding the respondent's argument on appeal (Respondent's Br. at 2-4), we find that the Immigration Judge correctly denied the respondent's request for a continuance (Tr. at 41-42). We have held that an Immigration Judge's refusal to continue a hearing until a visa number becomes available was proper because an Immigration Judge may neither terminate nor indefinitely adjourn the proceedings in order to delay an alien's deportation. See *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982) (stating that an Immigration Judge's province does not include reviewing the district director's wisdom, but he or she must execute the duty of determining whether deportability is sustained by the evidence). An Immigration Judge also has a duty to determine deportability in an expeditious manner. See *id.*; see also 8 C.F.R. § 1239.2(f) (2004). In addition, although we have previously carved out an exception to the general rule that aliens in proceedings are not accorded continuances for the resolution of a visa petition, the Department of Homeland Security in this matter has expressed its opposition to a continuance (Tr. at 38). See *Matter of Velarde-Pacheco*, 23 I&N Dec. 253 (BIA 2002). Moreover, notwithstanding that *Matter of Velarde-Pacheco*, *supra*, was decided in the motion context, the respondent here has made no attempt to abide by the exception carved out therein. Based on the foregoing, we affirm the Immigration Judge's decision finding that the respondent failed to establish *prima facie* eligibility for the relief requested. Accordingly, the appeal is dismissed.

  
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FOR THE BOARD